

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – November 18, 2005

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Theresa Barrett
- Honorable Tim Bee
- Honorable Andy Biggs
- Honorable David Bradley
- Honorable Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Daniel Cartegena
- William Fabricius
- Honorable Beverly Frame
- Honorable Gabrielle Giffords
- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- Jay Mount
- George Salaz
- Ellen Seaborne
- Russell Smoldon
- Judy Walruff
- Wanda Weber
- David Weinstock
- Dale Wiebusch
- Hon. Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Megan Hunter
Annette Mariani
Kim Martineau
Courtney Riddle

Administrative Office of the Courts
Administrative Office of the Courts
Senate
House of Representatives

CALL TO ORDER

The meeting was called to order by Representative Hershberger at 10:14 am without a quorum present.

ANNOUNCEMENTS

New member, George Salaz, who was appointed by the Senate President Bennett as a non-custodial parent representative to the Domestic Relations Committee was introduced. Committee members introduced themselves to Mr. Salaz.

INTEGRATED FAMILY COURT – ELLEN SEABORNE

In the September meeting, the Integrated Family Court Workgroup was asked to come up with an estimate for two Integrated Family Court Pilot Programs. Ellen Seaborne provided an update on the progress since the September meeting.

Discussion from September Meeting:

- Judge Newton from Coconino County previously estimated a one-year \$300,000 cost for a pilot program.
- Paul O'Connell from Pinal County estimated a one-year cost of \$250,000 for a pilot program in Pinal County.
- The pilot program should run two years to obtain good data.
- A bill would need to be drafted that follows the ten recommendations to the extent possible.

The workgroup did not have opportunity to meet but will meet after today's meeting to discuss and begin drafting a legislative proposal that requests an appropriation for a two-year pilot program for two counties that follows the original IFC recommendations to the extent possible and giving the Domestic Relations Committee oversight over the programs. The workgroup will submit a legislative proposal to the Domestic Relations Committee at the December meeting for a vote.

CREDIT ISSUES WORKGROUP – ELLEN SEABORNE

The workgroup has continued developing legislative proposals based on this Committee's feedback.

Education Component:

Beverly Frame joined the workgroup to provide input from the Clerk of Superior Court viewpoint. The Clerks support the marriage education proposal; however, some if not most counties would not have staff or facilities available to facilitate viewing of the educational video and answer resulting questions. The clerks would also encounter costs once the program is implemented, including filing the certificate, attaching it to the marriage license, scanning it in and archiving. An increase for a marriage license fee to cover a surcharge to administer the program could possibly help with the clerks being reimbursed a certain amount.

The workgroup discussion included:

- \$5.00 for administrative fee.
- What is the easiest way to disseminate this to the public that would not involve a bureaucracy of each county having a place to do this and an administrator to oversee it. The video could be made available on the Supreme Court's website. After the video is viewed, the couple could print out a certificate that would be submitted to the Clerk's office upon application for a marriage license.
- Creating a central registry with the Secretary of State's Office for pre- and post-nuptial agreements and associated fees.
- Tax or surcharge on marriage license fee.

Members mentioned that the Government Information Technology Agency (GITA) should be contacted regarding the central registry. The workgroup will continue analyzing where the best place would be to locate the statute and the legal effects of the proposed legislation.

Credit Component

Ellen explained the draft proposal that will be submitted for the Committee to review regarding a provision that credit companies must have signatures from both spouses if they want to enforce against both, and a provision that the division of debts can still be determined by the court or by the parties' signature agreement.

Members discussed the impact of such legislation including the impact on an individual trying to get credit. Members suggested that the workgroup add additional language to clarify that this requirement (referring to creditors) should not affect A.R.S. §25-213 or any other place where this would exist that would permit the courts to make the equitable allocation. Concerns were raised that there needs to be more clarity before going forward to legislation.

CALL TO THE PUBLIC

There were no public members in attendance.

WORKGROUP REPORTS

SUBSTANTIVE LAW – DANIEL CARTEGENA

Discussion centered on A.R.S. § 25-803(D) to possibly reduce bad behavior that this statute may encourage. Currently, the law does not provide encouragement for both parents to work together in allowing shared time with a child before a divorce or legal separation have been filed. The group discussed the possibility of having a temporary post-separation parenting time consensus agreement that would be submitted to the court for review and approval. This would put a mechanism in place to encourage parents to begin thinking of the children early on in the process of separation. This could be accomplished through a quick hearing with a judge or expedited mediation service and a submission of a three-month temporary parenting plan with flexibility. The idea is to set up a workable and reasonable schedule of time with both parents before an actual petition of divorce or legal separation is filed. The group will look at the conciliation statutes as a possible place to locate such language.

COURT PROCEDURES - BRIAN YEE

The workgroup focused on the issue of the loss of resources to the community with emphasis on custody evaluators and court appointed experts due to the high likelihood of professional board complaints. David Weinstock has gathered background data including a study of nationwide complaints out of custody evaluations. A study in California over a nine-year period (1990-1999) reflected 1,660 board complaints in custody evaluations with one finding against a psychologist.

Arizona has the fourth highest rate of board complaints. It is believed that the statistics gathered were not accurately tracking the board complaints related to custody evaluations. Many of the complaints came under “unprofessional contact” and not under “erroneous decisions” in custody evaluations. Due to this issue the roster of individuals who are willing to conduct this type of work has decreased causing an increase in cost, which ultimately affects the community.

The group discussed the consideration of a “judicial gatekeeper” bill. When a litigant has concerns on the appropriateness of the work of an evaluator, a complaint would be addressed by the judge who has oversight of the case instead of the board. If the judge has determined that there has been impropriety or incompetence, the judge can then rule that it crosses the threshold for a professional board complaint. The two legal precedences for this are: 1) the law that shields physicians who conduct court-appointed evaluations from professional board complaints as a result of that work, and 2) the law that authorizes a “judicial gatekeeper” system for forensic psychologists who evaluate sex offenders. A psychologist’s opinion is not subject to be used as a board complaint in these cases.

The proposed bill would provide an additional filter and some protection for professionals doing this work which could reduce the number of frivolous or inappropriate complaints. A pattern has shown that these complaints are usually entered just prior to the time that the appointed expert is due to testify.

Additionally, when a board complaint is filed, a new evaluation must be conducted, causing more costs and delaying the case another six to eight months making an impact on the children involved. This issue will be discussed further in the December meeting.

NEXT MEETING

The next meeting will be held on Friday, December 16, 2005 at the Arizona State Courts Building, 1501 W. Washington, Phoenix.

ADJOURNMENT

The meeting was adjourned at 12:54 pm.